amo ·REPORT·

REPORT SERIES 1987

87-12

THE LICENSING OF BUSINESSES BY MUNICIPALITIES

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO
AUGUST 1987

90-00855/

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Association of Municipalities of Ontario, a non-partisan voluntary organization, is united to promote the values of the municipal government system and the status of the municipal level of government as a vital and essential component of the total inter-governmental framework of Ontario and Canada.

The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

The Association represents some six hundred (600) municipal governments throughout Ontario. The governing body is composed of some eighty (80) municipal elected and appointed officials, who in turn represent a wide-range of municipal government interest.

The following sections and affiliated municipal professional associations form an important part of the Association's structure and therefore, play an important part in its activities in terms of the Board of Directors, program and policy development:

Association Sections:

* County and Regional Section
* Large Urban Section
* Northern Ontario Section (FONOM/NOMA)
* Rural Section (ROMA)
* Organization of Small Urban Municipalities Section

Association Affiliates:

* Association of Municipal Clerks and Treasurers of Ontario
* Association of Municipal Tax Collectors of Ontario
* Municipal Engineers Association
* Ontario Municipal Administrators Association
* Ontario Municipal Personnel Association
* Ontario Municipal Social Services Association
* Society of Directors of Municipal Recreation of Ontario
* Urban Finance Officers Association of Ontario

To the Municipal Clerk:

Please circulate this Report to the members of council and to the staff of your municipality. Additional copies are available at $10.00 each from the Publications Centre, Association of Municipalities of Ontario, 100 University Avenue, Suite 805, Toronto, Ontario, M5J 1V6.

TABLE OF CONTENTS

	Page
BACKGROUND	1
INTRODUCTION	4
THE NEED FOR GENERAL LICENSING LEGISLATION	4
Disorganization	4
Lack of Consistency	5
Out of Date	6
Responsiveness	6
DISCUSSION PAPER ON MUNICIPAL LICENSING IN ONTARIO	7
Scope of Licensing	7
Purpose of Licensing	8
Distribution of Licensing Powers	9
Fees	10
Classification of Businesses	11
Limits	12
Location	13
Examinations	13
Refusal, Revocation, Suspension	14
Sunset Provision	15
Licensing Advisory Committee	15
AMO'S LICENSING BILL	16
Definition	16
Statement of Purpose	17
General Power to License	17
Procedural Safeguards	18
Sunset Clause	19
Licensing Advisory Committee	20
Fees	21
CONCLUSION	21
APPENDICES	
Appendix I - Businesses Subject to Municipal Licensing under Current Legislation	23
Appendix II - AMO's Licensing Bill	25

THE LICENSING OF BUSINESSES BY MUNICIPALITIES

BACKGROUND

Whenever a provincial task force or an advisory committee is struck to review a certain municipal issue or function, frequently one of the first recommendations that is made is that the legislative authority related to that issue or function should be consolidated into a single piece of legislation. The Municipal Conflict of Interest Act represents an example of consolidated legislation resulting from such a review. There have also been calls for consolidated financial legislation. More recently, the Advisory Committee on Municipal Elections called for a single piece of legislation governing local elections.

There are a number of explanations for the tendency towards consolidated legislation for various functions. Frequently, legislation is developed on an ad hoc basis in response to day to day problems. Over time, the legislative clauses affecting a certain function may become scattered throughout a single piece of legislation or even among several pieces of legislation. As a result of this process, inconsistencies often arise or provisions become out of date. We are also witnessing a tendency towards increased functional specialization at the municipal level. As this happens, existing legislation is often found to be lacking.

The legislation governing municipal licensing reflects the problems and pressures described above. The legislation has been developed over a period exceeding 100 years so that many of the terms are no longer in common usage, many of the fees do not reflect todays costs, and consistency is severely lacking.

There have been a number of attempts made to reform municipal licensing. In December 1977, Bill 119 was introduced but was found to be inadequate by municipal organizations. Subsequently, Bill 105 was introduced in June 1978, but it made little progress, nor did Bill 157, October 1981. The most recent attempt at reforming the municipal licensing function was Bill 11 (1982), An Act to Provide for the Licensing

of Businesses by Municipalities (short title - the Municipal Licensing Act).

Under the Municipal Licensing Act, a general municipal licensing power would have replaced the various provisions contained within the Municipal Act. The Bill also set out a number of included powers; e.g., the power to prohibit the carrying on of a business without a licence, as well as procedural safeguards related to the exercise of that power. While Bill 11 was widely supported by municipalities, it did not proceed beyond second reading because of opposition from the business community.

The primary objections to the Municipal Licensing Act were related to the definition of a business and the fee provisions. Other objections were less well defined but revolved around the notion that municipalities would rush to expand their business licensing functions and act arbitrarily in limiting the number of businesses licensed or in imposing fees.

When the Municipal Licensing Act was originally introduced in 1982, "business" was defined as "any trade, calling, business, occupation, manufacture or industry". While municipalities were not interested in expanding into previously unoccupied territory, it was argued that the definition was far too broad. At the time, the Association agreed to a more limited definition which clearly exempted manufacturers and wholesalers.

The Municipal Licensing Act contained two alternatives with respect to fees. Municipalities could choose between a maximum fee of $10, or $25 where an inspection was required, or the licence fees could be fixed so that revenues from the licensing function offset the costs of administering and enforcing the licensing by-laws of the municipality. While the inclusion of the cost-recovery clause represented a limitation on fees where there was no limit on most fees under the existing legislation, objections were raised. At the time, the Association agreed to

accept an amendment to Bill 11 to remove enforcement costs from the cost-recovery clause.

Having satisfied the two main objections of the various interest groups, the Association expected that Bill 11 would proceed fairly smoothly, however opposition remained. The continued opposition revolved around the notion that municipalities would rush to expand their business licensing functions and act arbitrarily in limiting the number of businesses licensed or in imposing fees. In fact, municipalities had always had extensive licensing powers. Bill 11 only sought to add more certainty to the process for both municipalities and the businesses subject to licensing. On the matter of arbitrary action by municipalities, Bill 11 was actually loaded with safeguards to protect the rights of businesses.

Recently, the issue of municipal licensing was revived through the release of the Discussion Paper on Municipal Licensing in Ontario as well as through the City of Brantford's successful application for private licensing legislation. The Provincial Discussion Paper provides a framework for dialogue on municipal licensing. In this regard it identifies the issues which are relevant to licensing in Ontario and gives some background on the problems with the present legislation, the alternatives available to deal with these problems and the advantages as well as disadvantages of the various approaches. The Brantford legislation is modelled very closely after Bill 11, 1982, with a general licensing power replacing the specific licensing provisions of the Municipal Act. It also includes a five-year sunset clause and provision for a licensing advisory committee with representation from the Brantford Regional Chamber of Commerce.

INTRODUCTION

The purpose of this report is to take a fresh look at the issue of municipal licensing in light of the Provincial Discussion Paper and the City of Brantford's private legislation. The report proceeds from an examination of the need for general licensing legislation, through an analysis of and response to the discussion paper, to the presentation of the Association's own proposed licensing legislation.

THE NEED FOR GENERAL LICENSING LEGISLATION

The licensing of businesses by municipalities is currently governed by the Municipal Act. The key problems with the Municipal Act can be summarized as follows:

. licensing provisions are dispersed throughout the Act;

. there is great inconsistency among the various provisions;

. many provisions are out of date; and

. the legislation is not responsive.

Disorganization

The Municipal Act contains provisions covering such broad areas as contractors, entertainment, sales, services, the serving of food, vehicle-related provisions, etc. Under the heading of service, there are provisions ranging from barbershops and hairdressing establishments to photographers on streets and transient photographers. Under food-related provisions, the legislation addresses everything from bake shops to the sale of refreshments on the street. These provisions are

scattered throughout the Municipal Act so that it is often difficult to determine whether or not a particular business may be licensed, or which licensing provision to use. Appendix I is a list of businesses subject to municipal licensing in the current legislation.

Lack of Consistency

Not only are the licensing provisions scattered throughout the Municipal Act, there is also a lack of consistency among the various provisions. Licensing powers are divided among upper and lower tier municipalities and police commissions. At the upper tier level, the licensing powers of regional government vary considerably from region to region, while half the regions have no authority at all. Some powers apply to all businesses while others apply to specific businesses. Some businesses are subject to licensing, regulating and governing while others are subject to licensing and regulation, while still others are subject to licensing, regulating and controlling.

The lack of consistency with the legislation becomes grossly apparent when one examines the fee provisions of the Municipal Act. The Discussion Paper on Municipal Licensing in Ontario summarizes this problem quite precisely:

> The Municipal Act provisions for setting licence fees do not seem to follow <u>any perceptible rationale</u>. According to subs. 110(4) and (5), councils can charge any level of fees (provided they are not so high as to prevent a business from operating). But in other sections of the Act, maximum limits have been set for certain businesses. Those limits abound with inconsistencies. For instance, there are

discrepancies in permitted maximums for similar enterprises: fees for meat sales are set at $50 (cities) and $25 (towns) while food shops can only be charged $10. Some disparities can be attributed to inflation. Thus, businesses included in the licensing provisions recently are subject to higher fees than those included earlier. For instance, the maximum for driving instructors and schools is $50, while for fuel dealers it is $5. Conversely, the fees for some activities have not been adjusted to match the inflation rate: the upper limit for transient traders has only doubled in

Out of Date

In terms of provisions being out of date, it suffices to say that many of the licensing provisions in the Municipal Act have lasted much longer than the situation or problem they were intended to address. Their existence on the books serves to complicate the licensing framework even more than it already is. The fees provisions are also out of date as described above and much of the terminology is not in common use today.

Responsiveness

Perhaps the most serious problem with the current legislation relates to its responsiveness to new situations; there is none. When a new situation arises in a municipality (e.g., tanning salons, video arcades, fly-by-night operations, etc.), there is often an immediate call for licensing and regulation from the public or from existing businesses. For a municipality to license and regulate the new business, it must go

through the timely process of seeking private legislation or an amendment to the Municipal Act. By the time, the municipality has obtained the appropriate authority, the situation it is intended to remedy may have come and gone.

DISCUSSION PAPER ON MUNICIPAL LICENSING IN ONTARIO

At the outset, AMO wishes to compliment the Ministry of Municipal Affairs on the release of the draft Discussion Paper on Municipal Licensing in Ontario. The paper does an excellent job of identifying and defining the various issues and options involved clearly and articulately. The report also contains an abundance of reference information which had not previously been gathered together in one document. The discussion paper should go a long way towards promoting a common understanding of the issues involved.

The following represents the Association's response to the Discussion Paper. The Association has provided definitive comments on each of the issues and questions raised. These comments are reflected in the Association's draft legislation which is presented in the following section.

Scope of Licensing

The previous section of this report clearly established the need for general municipal licensing legislation. The discussion paper confirms the Association's analysis in this regard. It is interesting to note that Manitoba, Alberta, Saskatchewan and British Columbia have granted general licensing powers to municipalities. Of greater significance is the fact that municipalities did not respond with "excessive regulatory zeal" upon receiving their new powers.

It is entirely appropriate for municipalities to be granted general licensing powers. As the discussion paper points out:

> " They (municipalities) are in the best position to balance on the one hand, the need to attract business for tax revenue purposes, for stimulating local employment and for providing services to the population, against, on the other hand, the need to regulate business to ensure the safety, security and convenience of the residents."

The Association does not believe that manufacturers and wholesalers should be included under the municipal licensing framework. However, all businesses serving the public directly should be. The Association has reservations about a provincial power to exempt businesses by order-in-council. That would take an essentially local decision out of the hands of council. An active business lobby could also use this avenue effectively so that over time the intent of general licensing legislation could be undermined.

Purpose of Licensing

The Association has always emphasized that municipalities view licensing as a regulatory power, not a revenue instrument. The discussion paper quite rightfully points out, however, that there is no legislative statement on the purpose of licensing in the Act. The Association agrees that any new licensing legislation should include a statement of purpose. This will assist municipalities in drafting their by-laws to ensure that consistent principles are adhered to. Local businesses will also be reassured to know that municipalities must have reference to a statement of purpose in deciding which businesses to license and the extent of regulation.

Distribution of Licensing Powers

The majority of licensing responsibilities are vested with the local municipalities. However, counties, regions, and police commissions hold a few licensing powers. The discussion paper asks how licensing power should be distributed between the upper-tier and lower-tier municipalities and whether or not non-elected bodies should retain any power in the municipal licensing field. The Association believes that all licensing powers should be established at the lower-tier level. The distribution of the power among the various levels and different agencies has contributed greatly to the confusion which currently exists. In addition, with respect to police commissions, the Association supports the discussion paper's comment that elected officials who are politically accountable to the community must be responsible for regulating the conduct of citizens - not appointed bodies.

There are a few important exceptions to AMO's recommendation that all licensing be done at the local level. Currently, virtually all of the licensing powers of the constituent municipalities of Metro Toronto are held by Metro and administered by the Metro Licensing Commission. The Association would not want to interfere with this well developed and effective model for licensing. In fact, a strong case can be made for the delivery of licensing on a uniform basis over large geographic areas. As such, the Association has included a clause in its legislation which would allow for upper-tier municipalities to assume the licensing function on behalf of the lower-tier municipalities. The Association further endorses the delegation of the power to refuse, revoke and suspend licences where a licensing commission has been established.

There is also one licensing power that may be more amenable to delivery by the upper-tier level and that is the authority to licence auctioneers. Of all of the licensing powers available to counties, the only power that counties use extensively is that governing auctioneers.

The current legislation provides that the council of a county may pass by-laws for licensing, regulating and governing auctioneers, and further that where local by-laws have been passed, the county by-law does not apply. The Association has included county authority to licence auctioneers in its legislation, however, the county by-law is given precedence to preclude the possibility that auctioneers will have to acquire licences in several jurisdictions, and generally to minimize confusion. The Association would not want to see this exception used as the basis for further exceptions which would tend to lead back to the confused situation which the AMO legislation is attempting to remedy.

Fees

The discussion paper quite accurately describes the current fee provisions of the Municipal Act when it states "the Municipal Act provisions for setting license fees do not seem to follow any perceptible rationale". Some of the fees are ridiculously low because the provisions were made years ago and never adjusted. Then, as similar provisions were added at a later date, higher fees created inconsistencies among similar provisions. In some cases, the legislation does not provide for maximum fees, rather council is permitted to charge any fee provided it is not so high as to prevent a business from operating.

The discussion paper proposes three options with respect to fees: cost recovery; flat rate; and no fee limit. Cost recovery has the advantage of recognizing local autonomy while preventing municipalities from using licensing for revenue. The flat rate fee is administratively simple but could lead to municipalities overemphasizing those businesses that are relatively inexpensive to license. With no fee limit, municipalities would be responsible for balancing the need to attract new business and retain existing businesses with the need for more revenue.

Of the three options proposed, the Association prefers the cost recovery model. The flat rate would be unfair to those businesses that are relatively simple and inexpensive to license. While a wide open fee structure (i.e., no fee limit) would be handled responsibly by municipalities, the business community would be unlikely to place their faith in the fact that municipalities are quite able to balance competing interests and in the fact that municipalities view licensing as a regulatory, not a revenue function. The cost recovery model allows the municipality to set fees based on the cost of providing the service. In this sense, it is extremely fair to business in that the smaller, less expensive businesses to license are not subsidizing the larger businesses that require frequent inspections, etc.

The Association would point out however, that a fourth option exists. The City of Brantford legislation includes a hybrid of the cost-recovery and no fee limit options. The Brantford legislation provides that "In setting the amount of fees to be charged for the licence, the council of the corporation shall take into account the costs in administering and enforcing the licensing by-laws of the municipality". This approach requires the council to take a look at the cost of licensing while not tying it down and limiting its flexibility. As such, the city might provide fee relief for smaller businesses or businesses which it is seeking to attract, etc. The Association supported this fee provision at the hearings on the Brantford legislation and has included it in its own legislation.

<u>Classification of Businesses</u>

The City of Brantford's private legislation permits across-the-board classification authority for licensing purposes. In practice, this power is limited by judicial interpretation so that while Brantford could distinguish between enterprises on the basis of types of goods or services offered, they could not classify businesses on the basis of size or location.

This limitation presents some problems for municipalities. For example, the 1985 Annual Conference of the Association endorsed a resolution seeking the authority to licence, regulate, govern, control, classify and inspect shops where accessories such as stereos and trailer hitches are installed on automobiles. The key element of the authority sought was the ability to classify. The originating municipality was not concerned with all such shops, only those in residential areas.

While the inclusion of a broad classification power would be an effective regulatory tool in situations such as the one described, municipalities would be open to criticism on the basis that the power could be used arbitrarily. The alternative, unfortunately is to have municipalities imposing broad regulations on all businesses, regardless of location. All things considered, AMO believes that municipalities should find other means of addressing such problems and, as such, the Association does not intend to pursue an expanded classification power. Instead, it will endorse the clause in the Brantford legislation.

Limits

Should municipalities have the power to limit the number of licences issued for any business? Under the current legislation, municipalities may establish limits on the number of licences in such businesses as pool halls, restaurants and public garages, although the power may not be used to create a monopoly. It is difficult to justify municipal authority in this regard. The rationale advanced for allowing municipalities to limit the number of licences is to control nuisance and crime, however the power can be seen to be open to abuse in terms of protection of existing businesses. The Association does not feel that municipalities should have the power to limit the number of licences issued for any business unless a specific business has been identified as requiring additional licensing powers. For example, in its legislation

the Association has set apart taxis as a business where municipalities require additional powers and included the power to limit the number of licences.

Location

Under the current legislation, locational regulations apply to only a few businesses, namely auctioneers, meat sellers, exhibitions, bowling alleys, sale of newspaper on a highway and service stations. The ability to mitigate the effects of unwanted land uses on surrounding areas through licensing would be welcomed by municipalities. However, municipalities already have zoning controls which address this problem. The imposition of a further level of control on business location could legitimately be seen as restricting freedom of commerce. As such, the Association does not support the inclusion of locational restrictions in licensing legislation.

Examinations

Under the current legislation, municipalities are given the express authority to examine electricians, and the authority to test plumbers is implied. However, many other trades may not be examined such as drain repair, heating and ventilation, and sandblasting. There is no logical basis for this discrimination. It has been suggested that a possible approach to this problem would be to permit municipalities to require all master tradesmen to submit to competence testing whether or not they are certified under the Apprenticeship and Tradesmen's Qualification Act. However, tradesmen who are certified under the Act would not be required to undergo examination. In this way, municipalities could monitor the proprietor's knowledge of local regulations while leaving the questions of technical competence to the provincial administration. The Association endorses this approach

completely. In fact, this is the approach that the City of Brantford has taken with its by-law.

Refusal, Revocation, Suspension

The power to refuse, revoke or suspend a licence is a power which affects individuals abilities to make a living, and as such must not be taken lightly. In invoking any of these powers, the municipality must be bound by the rules of fairness. The City of Brantford legislation includes a number of procedural safeguards which the Association feels provide an effective balance to the power to refuse, revoke or suspend a licence. The legislation provides that the council shall not refuse to grant a licence to any applicant or suspend or revoke the licence of any person without first affording to such applicant or person the right to be heard. The hearings are to be conducted by a Committee and the provisions of the Statutory Powers Procedure Act apply. The Association feels the provisions of the Brantford legislation are fully appropriate for municipalities to follow when refusing, suspending or revoking a licence.

Notwithstanding all of the foregoing, there will always be situations requiring immediate decisions; for example where public safety is at stake or where criminal acts have been committed. In order to deal effectively with these situations, municipalities need a temporary suspension power, and the Association has included such a power in its legislation. In order to minimize the potential for arbitrary action on the part of the municipality, the Association has included a further requirement that the temporary suspension power only be available to those municipalities which have included rules for its use in their licensing by-law. Beyond that, the potential for civil action will represent a natural safeguard in relation to the exercise of the temporary suspension power.

Sunset Provision

One of the interesting features of the City of Brantford's private licensing legislation is the sunset clause. The City of Brantford Act, 1986, provides as follows: "A by-law passed under the authority of this Act shall, upon the expiry of five years from the date of its passing, be deemed to have been repealed." The logic behind the inclusion of the sunset clause is to encourage a regular review of the licensing by-law. This can be seen to have both positive and negative aspects. In terms of advantages, in addition to encouraging a regular review of the licensing by-law, the sunset clause could facilitate deregulation. On the other hand, the expiry of the licensing by-law could represent an opportunity to expand the scope of the licensing by-law.

The Association prefers its Rural Section's proposal in this regard and that is that rather than the by-law being repealed every five-years, that provision be made for a mandatory review after five years. The mandatory review would in fact be more effective than the repeal clause where a municipality could simply re-enact its licensing by-law at the same meeting and without looking at it.

Licensing Advisory Committee

One of the unique features of the City of Brantford's private legislation is the provision for a licensing advisory committee. The five person committee would be made up of the clerk, two members from the general public, and two members nominated by the Brantford Chamber of Commerce, and would provide advice to council on licensing matters. For example, the licensing advisory committee could review by-laws developed under the legislation, it could carry out the mandatory five year review, and it could fulfill a general monitoring function.

The discussion paper asks whether it is appropriate for the legislation to require councils to consult with their local business community regarding municipal licensing issues. While we believe that the wise council will consult with the local business community on licensing matters, we do not believe that consultation should be mandatory or that a licensing advisory committee is the only consultation model. However, as a licensing advisory committee may be an effective body in some municipalities, the Association has included permissive authority to establish such a committee in its legislation.

AMO'S DRAFT LICENSING LEGISLATION

The City of Brantford's licensing legislation was modelled very closely after the Municipal Licensing Act (Bill 11, 1982) with a number of significant enhancements. In fact, the Brantford legislation was developed in close consultation with the Brantford Regional Chamber of Commerce. The Association made a presentation to the Legislature's Committee on Regulations and Private Bills in support of Brantford's application. In his remarks, AMO President John Gerretsen noted that the Association had long sought legislation similar to that contained in the Brantford Bill on behalf of all Ontario municipalities. The Brantford Bill forms the basis of the AMO bill which is attached to this report. The AMO Bill has of course, been broadened in scope to reflect its application to all municipalities as well as our comments on the discussion paper.

The Association is recommending this bill to the government for adoption and is prepared to assist in its promotion. Listed below are the key features of the Bill.

Definition

In this Act, "business" means any trade, calling, business or occupation, and includes the sale or hire of goods or services on an

intermittent or one-time basis but does not include,

(a) a manufacturing business or an industry, except to the extent that it sells its products or raw materials by retail; or

(b) the selling of goods by wholesale.

The AMO Bill contains the Municipal Licensing Act definition of a business as amended, i.e., it specifically excludes a manufacturing business or an industry and the selling of goods by wholesale.

Statement of Purpose

The purpose of licensing is to promote and preserve the health, safety and well being of the inhabitants of the municipality, and to ensure a level of service to the community which meets with community standards.

This statement of purpose has been included in the AMO legislation. The Association believes that a statement of purpose is necessary in order to provide a focus for municipalities when developing licensing by-laws. A statement of purpose will ensure that the licensing program of the municipality addresses consistent principles. The above statement achieves this goal while being flexible enough to permit municipalities to respond to new and different situations.

General Power to License

By-laws may be passed by the councils of local municipalities for licensing, regulating and governing any business carried on within the municipality.

The Association recommends replacing the various provisions of the Municipal Act with a general licensing power. The Association does not

envisage any provincial power to exempt businesses from licensing.

With discretion over the licensing function, municipalities will be able to license those businesses that are felt to need regulation in order to preserve those matters deemed to be in the public interest. Of greater importance, municipalities will be able to respond to new situations as they arise, rather than having to resort to the time-consuming legislative process of adding individual businesses to the legislation.

Discretion over the licensing function will not lead to a vast expansion of business regulation through licensing. In fact, most municipalities currently employ very few of the over sixty licensing provisions available to them. There are also many natural safeguards to prevent the expansion of business regulation through licensing. First and foremost among these is the accountability of locally elected politicians. No council would undertake to impose a by-law that would tend to drive commercial establishments from the community.

The implementation of the AMO licensing Bill will lead to a long overdue review and overhaul of many municipal licensing by-laws as municipalities attempt to develop new licensing by-laws. Many provisions currently on the books will be dropped, while other categories will be consolidated. In fact, the City of Brantford has dropped several provisions from its by-law and will not be adding any new provisions without first placing notices in the local newspaper and referring the issue to its licensing advisory committee. Municipalities will also be able to use terminology which is understood locally and establish locally derived fee structures.

<u>Procedural Safeguards</u>

> **The council shall not refuse to grant a licence to any applicant or suspend or revoke the licence of any person without first affording to such applicant or person the opportunity to be heard.**

The AMO Bill contains a number of procedural safeguards to protect the rights of licence applicants. For example, Section 6(2) of the Bill provides that the Council shall not refuse to grant a licence to any applicant or suspend or revoke the licence of any person without first affording to such applicant or person the opportunity to be heard. The conduct of the hearings is further defined in subsections (3) and (4). Subsection 3 provides that hearings can be conducted by a committee to consist of one or more persons, at least one of whom shall be a member of council. Subsection 4 provides that Section 106 of the Municipal Act applies to the hearings. The key provision of Section 106 is as follows:

> Where a committee conducts a hearing in respect of any matter pursuant to a by-law passed under this section, and where the decision to be exercised by the council in respect of the matter is a statutory power of decision within the meaning of the Statutory Powers Procedure Act, the provisions of Section 5 to 15 and 21 to 24 of the Statutory Powers Procedure Act shall be deemed to apply to the Committee and to the hearing conducted by it.

The provisions of the Statutory Powers Procedure Act include a right to reasonable notice of the hearing and details, and the right to know the allegations against you or the case you must meet.

<u>Sunset Clause</u>

> **A by-law passed under the authority of this Act shall be reviewed from time to time and not less frequently than every five years from the date of its passing.**

Section 10 provides that any by-laws passed under the authority of the licensing legislation shall be reviewed every five years. This will ensure that municipalities periodically review their licensing by-laws.

Licensing Advisory Committee

The council of the Corporation may, by by-law,

(a) appoint a licensing advisory committee to advise council on proposed licensing by-laws and procedures; and

(b) establish terms of reference and operating procedures for the licensing advisory committee.

Section 12 of the Bill provides that municipalities may establish a licensing advisory committee. The role of the licensing advisory committee will vary according to local conditions. The City of Brantford will be referring its by-law to its licensing advisory committee for full review with special emphasis being placed on any new businesses to be licenced. The licensing advisory committee will also have an ongoing role in terms of monitoring the by-law, responding to problems, examining requests to add or delete businesses, and carrying out the five-year review.

The inclusion of a provision for a licensing advisory committee demonstrates that municipalities are only interested in administering a rational licensing function which will benefit both the municipality and the businesses to be licenced. Most municipalities will include direct representation from the local business community on their committees to further enhance the role of the committee.

Fees

- **in setting the amount of fees to be charged for the licence, the council shall take into account the costs in administering and enforcing the licensing by-laws of the municipality.**

The AMO Bill contains the fee provision that was approved by the Standing Committee on Regulations and Private Bills for the City of Brantford. There is every reason to believe that municipalities will not abuse the proposed fee structure. In the same way that most municipalities employ only a few of the over sixty licensing provisions available to them, most municipalities do not take full advantage of the current fee structure. For example, Metro Licensing Commission only recovers approximately 80% of its costs whereas with no upper limits being prescribed in many cases, it could recover much more. The licensing advisory committee will provide input into the fee structure and no municipality would be interested in imposing a prohibitory fee schedule.

It should be clear that municipalities view licensing as a regulatory function, not a revenue instrument. At the same time, the costs of inspection, etc., related to a particular licence may in fact be quite high. As the licensing process benefits the business as much as the municipality and its inhabitants, municipalities should have the option, whether or not they choose to take advantage of it, of recovering the cost of administering the licensing function.

CONCLUSION

The 1983, 1984 and 1985 Conferences of the Association approved resolutions calling for general licensing legislation. On behalf of its membership, and in order to preclude the necessity of a parade of applications for private licensing legislation, the Association has prepared this report and legislation. It is recognized that the

legislation may not completely satisfy legislative requirements from a technical perspective, however the substance is important for present purposes and details can be worked out in time. The Association is recommending that this Bill be tabled in the house so that individual municipalities can comment on it and so that discussion with business interests can be initiated.

APPENDIX I

Businesses Subject to Municipal Licensing in Current Legislation

Food-Related

. Victualling houses, ordinaries, places for the lodging, reception, refreshment and entertainment of the public (restaurants)
. Food shops where food stuffs are made for sale, offered for sale, stored or sold
. Meat and fish shops, shops for the storage, handling and sale of fresh meat or fish
. Milk vendors including milk wholesalers
. Bake shops where bread is made for sale or sold
. Fruit and produce dealers selling to retailers and out of the province fruit and produce dealers
. Refreshment vehicles
. Sale of refreshments on the street.

Service

. Barbershops and hairdressing establishments
. Driving schools and instructors
. Dry cleaning, dry dyeing, cleaning and pressing, stain removal
. Fuel dealers
. Laundramats, self-service laundries, dry cleaning machines
. Laundries
. Lending libraries
. Lodging houses, nursing homes
. Massage parlours
. Pet shops
. Photographers on streets and transient photographers
. Public baths
. Shoe repair, shoe shine shops
. Tobacco shops.

Contractors

. Electricians
. Plumbers
. Drain contractors, drain layers, septic tank installers
. Chimney repairmen, building renovators, radiation fallout shelter construction
. Sandblasters
. Heating installers
. Insulation installers
. Television antenna installers and repairmen.

Vehicle-Related

. Car washes
. Livery stables
. Public garages, parking lots, motor vehicle repair shops
. Racing of motor vehicles or motor cycles
. Taxis, carters, limousines, buses, rental vehicles, any vehicle for hire
. Wheeled vehicles.

Entertainment

. Adult entertainment parlours
. Advertising sign painters, bill posters, bill distributors
. Billiard, pool, bagatelle establishments and tables
. Body rub parlours
. Exhibitions of wax works, merry-go-rounds, switch back railways, menageries, circus riding, similar shows, roller skating rinks
. Newspaper and magazine sales on highways
. Places of amusement, exhibitions, theatres, music halls, bowling alleys, moving picture studios
. Public halls
. Theatres
. Music and bands.

Sales

. Auctioneers
. Salesmen
. Transient traders
. Special sales
. Old gold dealers, other precious metals
. Salvage shops, second hand shops, salvage yards, dealers in second hand goods
. Pawn shops.

Others

. Explosive manufacturers
. Trailer parks
. Trailers
. Public address systems
. Swimming pools.

APPENDIX II

An Act to Provide for the Licensing of Businesses by Municipalities

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The purpose of licensing is to promote and preserve the health, safety and well being of the inhabitants of the municipality, and to ensure a level of service to the community which meets with community standards.

2. In this Act, "business" means any trade, calling, business or occupation, and includes the sale or hire of goods or services on an intermittent or one-time basis but does not include,

    (a) a manufacturing business or an industry, except to the extent that it sells its products or raw materials by retail; or

    (b) the selling of goods by wholesale.

3. (1) By-laws may be passed by the councils of local municipalities for licensing, regulating and governing any business carried on within the municipality.

    (a) subsection 1 does not apply to the Municipality of Metropolitan Toronto.

    (b) notwithstanding subsection 1, the council of a county may pass by-laws for licensing, regulating and governing auctioneers and other persons selling or putting up for sale goods, wares, merchandise or effects by public auction within the county, and where such a by-law has been passed by the council of a county, a by-law passed by the council of a local municipality, except a separated municipality, for the licensing, regulating and governing of auctioneers, is of no effect.

    (c) Where it is determined that the licensing function might better be administered on a uniform basis over a larger geographic area, the councils of upper-tier municipalities may pass by-laws for licensing, regulating and governing any business carried on within the municipality provided that each constituent municipality has expressly delegated its licensing authority to the upper-tier.

(2) A person who, in pursuit of a business, exposes samples, patterns or specimens of any goods or merchandise that are to be delivered in the municipality afterwards shall be deemed to be carrying on business in the municipality.

4. (1) The power to license, regulate and govern a business includes;

(a) the power to prohibit the carrying on or engaging in the business without a licence;

(b) the power to license, regulate or govern the place or premises used in the carrying on of the business and the persons carrying it on or engaged in it;

(c) the power to define a class or classes of a business and to separately license, regulate and govern each class or classes or to specify that any of the class or classes shall not be subject to the provisions, or to any particular provision, of the by-law;

(d) the power to require a person, as a condition of obtaining, continuing or renewing a licence to submit to an examination to determine that person's competence to engage in the business or any class of business to which the licence is related and to refuse to grant a licence, to grant a licence upon conditions or to revoke a licence if the person fails to pass the required examination;

(e) the power to exempt from an examination any applicant who holds such evidence of qualification, including a licence issued in respect of the business by any other specified municipality, as may be designated in the by-law;

(f) the power to regulate, govern and inspect the premises, facilities, equipment, vehicles and other personal property used or kept for hire in connection with the carrying on of the business and to provide for imposing a fine upon any person carrying on or engaged in the business who refuses to allow the carrying out of an inspection at any reasonable time under a by-law passed under this clause;

(g) the power to require the persons carrying on the business to provide public liability, property damage, cargo or other insurance in the form and to the amounts of coverage as may be prescribed in the by-law, and if such insurance is not so provided, the council may re-

fuse to grant a licence to that person for the carrying on of that business or may revoke or suspend any licence;

(h) the power to grant or refuse a licence for the carrying on or engaging in of such business or to revoke or suspend a licence and make any suspension subject to such terms or conditions as council may prescribe;

(i) the power to temporarily suspend a licence without notice or hearing for such time and subject to such terms and conditions as the licensing by-law provides;

(i) Section 6(2) does not apply to this subsection;

(ii) this power may only be exercised where the rules regarding its use are set out in the licensing by-law;

(j) the power to suspend, until the fine is paid, the licence of any person upon whom a fine has been imposed under the Provincial Offences Act for the contravention of the licensing by-law under which the licence was granted if the fine or any part of the fine is due and unpaid for fifteen days or more; and

(k) the power to fix the time for which the licence shall be in force;

(l) the power to fix the fee to be paid for the licence as a condition of the licence being granted;

(i) In setting the amount of fees to be charged for the licence, the council shall take into account the costs in administering and enforcing the licensing by-laws of the municipality.

(2) Subsection 3(1) applies to businesses which are licenced by another jurisdiction which pick up goods (i.e. moving or towing firms) in another jurisdiction.

(3) If a provision of a by-law passed under Section (3) or (4) is in conflict with the provision of any Act, other than the Municipal Act, for licensing, regulating or otherwise controlling any business or the persons carrying on or engaged in any business, the provision of that Act prevails to the extent of the conflict.

5. (1) In this section,

"journeyman tradesman" means a person who has been issued a certificate of qualification in a trade under the Apprenticeship and Tradesmen's Qualification Act;

"master tradesman" means a person who,

(a) is skilled in the planning, superintending and installing of parts, equipment and appliances in respect of the trade,

(b) is familiar with the laws governing the trade, and

(c) performs, or employs a journeyman tradesman to perform the trade.

(2) A person who holds a certificate of apprenticeship or a certificate of qualification issued under the Apprenticeship and Tradesmen's Qualification Act in respect of a trade or branch of a trade shall not be required to submit to an examination as a condition of obtaining a licence, but a licence granted to such person under a by-law passed under this Act may be revoked or suspended on the grounds that the person has engaged in the business in an incompetent manner and, upon such revocation or suspension, that person is no longer entitled to the benefit of this subsection.

(3) If council has passed a by-law for the licensing and examining of a master tradesman engaged in or carrying on work in respect of a specific trade, a person is not exempted from submitting to an examination under that by-law by virtue only of the fact that that person holds a certificate of apprenticeship or certificate of qualification in respect to the trade under the Apprenticeship and Tradesmen's Qualification Act.

6. (1) The exercise of the power under clause 4(h) is in the discretion of the council, which discretion shall be exercised upon such grounds as are set out in a by-law passed under subsection 3(1), and a decision made pursuant to the exercise of that power is final.

(2) The council shall not refuse to grant a licence to any applicant or suspend or revoke the licence of any person without first affording to such applicant or person the opportunity to be heard.

(3) The council may provide that a hearing under subsection (2) be conducted by a committee to consist of one or more persons, at least one of whom shall be a member of council.

(4) Section 106 of the Municipal Act applies with necessary modifications to hearings conducted by a committee under subsection (3).

(5) The council shall not refuse to grant a licence with respect to the carrying on of a business by reason only of the location of such business, except that the council shall refuse to grant a licence if the location of the business proposed to be carried on is such that the carrying on of the business would be in contravention of a by-law passed under section 34 of the Planning Act, 1983, or a predecessor of that section or of an order of the Minister made under clause 46(1)(a) of the Planning Act, 1983.

(6) The council may refuse to grant a licence or may revoke or suspend a licence where the business in respect of which the licence is to be or has been granted is to be carried on or is carried on in contravention of a by-law of the municipality.

7. A by-law passed under subsection 2(1) for licensing or regulating owners or drivers of cabs or buses used for hire or owners, operators or drivers of motor or other vehicles used for hire for the carriage of goods or passengers may,

(a) establish the rates or fares to be charged by the owners, operators or drivers of such vehicles for the conveyance of goods or passengers either wholly within the municipality or to any point beyond its limits;

(b) limit the number of cabs or buses used for hire or motor or other vehicles used for hire, or any class or classes thereof, that may be operated in the municipality;

(c) exempt from all or any of its provisions, upon such conditions as may be set out in the by-law, owners and drivers of cabs engaged in the conveyance of,

(i) children taking the cab both to and from nursery school, school or other full-time education institution, or

(ii) physically, emotionally or mentally handicapped persons, as defined in the by-law, from any point within the municipality to any point outside the municipality, where the conveyance is made pursuant to a written contract for the use of a cab with respect to which there is a valid and

subsisting licence issued under a by-law passed by another municipality; and

(d) exempt from all or any of its provisions owners and drivers of cabs with respect of which there is a valid and subsisting licence issued by another municipality in the by-law.

8. (1) In this section, "transient trader" includes any person,

(a) whose name is not entered on the assessment roll in respect of business assessment for the then current year or whose name is entered on it for the first time in respect of business assessment;

(b) who offers goods, wares or merchandise for sale in any manner; and

(c) who has not resided continuously in the municipality for at least three months immediately before the commencement of the business.

(2) Notwithstanding paragraphs 16 and 17 of section 232 of the Municipal Act, the power to license, regulate and govern a business includes the power to license, regulate and govern transient traders.

(3) For the purposes of this section, a corporation shall be deemed to reside in the municipality if its head office is located in the municipality or if the majority of its directors reside in the municipality.

(4) Any by-law licensing, regulating and governing transient traders,

(a) does not apply to the sale of the stock of a bankrupt or an insolvent, within the meaning of any bankruptcy or insolvency Act in force in Ontario, nor to the sale of any stock damaged by or by reason of fire, which is being sold or disposed of within the municipality in which the business was being carried on at the time of the bankruptcy, insolvency or fire, so long as no goods, wares or merchandise are added to such stock;

(b) does not apply to the sale of a business purchased in good faith by a person who continues the business;

(c) shall provide that the fee to be paid for a transient trader licence shall not be less than $100 and shall not exceed $500 but the fee to be paid for a transient

trader licence by a farmer, resident in Ontario, who offers for sale only the produce of his or her farm shall not exceed $5; and

(d) shall provide that if a person carrying on the business for which the transient traders licence is issued pays business tax with respect to the business in any year in which the fee for the licence is also paid then the fee shall be credited to the person paying it, or to any person who in good faith purchases the business and carries on the business, on account of the taxes payable in respect of the business in that year.

9. The powers granted under subsection 2(3), except clause (j) apply in respect of a by-law made under the Municipal Act for licensing, regulating or governing a business or the persons carrying it on or engaged in it or the place or things used for carrying it on except that if there is a conflict between this section and the provisions of the Municipal Act, the provisions of that Act prevail to the extent of the conflict.

10. A by-law passed under the authority of this Act shall be reviewed from time to time and not less frequently than every five years from the date of its passing.

11. For the purpose of any prosecution or proceeding under a by-law passed under this Act or the Municipal Act for licensing, regulating, governing, classifying or inspecting a business, a statement as to the licensing or non-licensing of any premises or person purporting to be signed by the clerk of the Corporation is, without proof of the office or signature of the said clerk, receivable in evidence as proof, in the absence of evidence to the contrary, of the facts stated therein.

12. The council of the Corporation may, by by-law,

(a) appoint a licensing advisory committee to advise council on proposed licensing by-laws and procedures; and

(b) establish terms of reference and operating procedures for the licensing advisory committee.

13. This Act comes into force on the day it receives Royal Assent.

14. The short title of this Act is the Municipal Licensing Act.

PUBLICATIONS ISSUED IN THE "AMO REPORT" SERIES

85-1 Response to Draft Regulation 309: Standards for Municipal Landfill Sites
85-2 AMO Response to "One-Stop Service: A joint provincial-municipal report on projects to test a proposed new method of delivering income maintenance benefits together with new supports for those seeking employment"
85-3 Municipal Infrastructure in Ontario: Funding Inadequacies
85-4 Report of the AMO Joint Committee on Sewer and Water Services
85-5 Report on the Dog Licensing and Livestock and Poultry Protection Act
85-6 AMO Response to CMHC Proposed Changes to the Residential Rehabilitation Assistance Program
85-7 Intervenor Funding and Cost Awards by Provincial Hearing Bodies

86-1 Response to the Ministry of Housing's 1985 Non-Profit Housing Proposal
86-2 Compulsory and Binding Arbitration: A Proposal (1984 edition)
86-3 Response to the Report Taxing Matters: An Assessment of the Practice of Property Taxation in Ontario ($10.00)
86-4 Response to Ministry of Housing's Guidelines for the Redistribution of Funds under the Ontario Home Renewal Program
86-5 Report on Amendments to the Planning Act, 1983/Addendum to AMO Report 86-5
86-6 AMO Submission to Provincial Premier and Executive Council of Ontario
86-7 Response to Provincial Government Discussion Paper on "Pay Equity"
86-8 Response to the Preliminary Report of the Advisory Committee on Municipal Liability Insurance
86-9 Response to the Report of the Commission of the Financing of Elementary and Secondary Education in Ontario
86-10 Housing Rehabilitation in Ontario
86-11 Response to the Foodland Preservation Policy Statement ($10.00)
86-12 Funding Income Maintenance in Ontario: Administration Costs
86-13 Report on Deinstitutionalization ($10.00)
86-14 Response to the Provincial Government's White Paper, "Municipal Industrial Strategy for Abatement (MISA)"
86-15 Response to "Issues and Options: An Interim Report on Municipal Elections in Ontario" ($10.00)
86-16 Response to Ontario Right to Farm Advisory Committee's Report

87-1 A Proposed Model of Collective Bargaining and Required Amendments for the Fire Departments Act ($10.00)
87-2 Response to the Final Report of the Advisory Committee to the Minister of Municipal Affairs on Municipal Liability Insurance in Ontario
87-3 Response to the 1986 Draft on Flood Plain Planning Policy Statement
87-4 Response to the Rental Housing Protection Act
87-5 The Future of Social Assistance in Ontario - Report to the Social Assistance Review Committee ($10.00)
87-6 AMO Submission to Provincial Premier and Executive Council of Ontario
87-7 Recommendations on the Pay Equity Act ($10.00)

87-8 AMO Discussion Paper on Lot Levies and Front-End Financing ($10.00)
87-9 A Proposed Model of Collective Bargaining and Required Amendments for the Police Act ($10.00)
87-10 Response to Bill 106 - An Act to Amend the Occupational Health and Safety Act
87-11 Unconditional Grants Proposal for 1988
87-12 The Licensing of Businesses by Municipalities

Copies of all the reports in this series are available at $5.00 each, (except as noted) for postage and handling, prepaid, from: Publications Centre, Association of Municipalities of Ontario, 100 University Avenue, Suite 805, Toronto, Ontario, M5J 1V6. Please make cheques payable to the Association of Municipalities of Ontario.

For a list of AMO reports prior to 1985, please contact the AMO office.